IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 651 of 2007()

LPC.12/2004 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD
CRIME NO.98/2002 OF KASARGOD POLICE STATION

.....

PETITIONER: 3RD ACCUSED

ABBAS ALI, S/O.LATE SEETHI,
AGED 30 YEARS, RESIDING AT KANAKATHODY,
KINNINGAR, NETTANIGE, KASARAGOD TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS: STATE

THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.651 of 2007

Dated this the 20th day of March 2007

O R D E R

The petitioner is the third accused in a prosecution under Section 8(2) of the Kerala Abkari Act. The crux of the allegation is that on 07/02/2002 at about 4.45 a.m, Karnataka arrack was being transported on an autorickshaw driven and belonging to the first accused and in which accused 2 and 3 were allegedly travelling. At the time of detection itself, the person who ran away from the scene was named as Abbas of Three Star Lodge. The third accused had not been arrested so far. Investigation is complete. In the course of investigation, the said Abbas is identified to be the petitioner herein. Investigation reveals that the petitioner is the person who was residing in Three Star Lodge and who was allegedly involved in the transportation of illicit liquor.

2. The petitioner has come to this court with this petition under Section 482 Cr.P.C with the short prayer that the final report may be quashed by invoking the powers under Section 482 Cr.P.C.

3. What is the reason? The short contention is that the petitioner is not the said Abbas. The learned Public Prosecutor has taken me through the case diary. The case diary indicates that the investigation by the officials reveals that the person who ran away from the scene of the crime was the person who was occupying a room in the Three Star Lodge for a fairly long period of time and that the petitioner is the said person.

4. I shall not venture to express any opinion on the acceptability of that allegation. Suffice it to say that I am not persuaded to agree that there are any compelling reasons which can, at this stage, persuade this court to believe that the prosecution initiated against the petitioner is not justified and is liable to be quashed for any reason by invoking the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and take part in the proceedings and raise the contention that he is entitled to be discharged/acquitted.

5. I may hasten to observe that I have not intended to express any opinion on the complicity of the petitioner. I only choose to take the view that there are no circumstances justifying the premature termination of the proceedings by invoking the powers under Section 482 Cr.P.C.

6. The learned counsel for the petitioner submits that the petitioner is now willing to surrender before the learned Magistrate. But the petitioner apprehends that the application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances prayed that directions may be issued under Section 482 Cr.p.C to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

7. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are exceptional and compelling reasons.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006